

### **REMARKS**

In the Action, claims 1, 3-25 and 35-39 are rejected, and claims 26-34 and 40-47 are withdrawn from consideration as being directed to the non-elected invention. In response, claims 1, 14 and 35 are amended.

The Action contends that claims 40-47 are directed to an invention that is independent or distinct from the originally claimed invention because the original claims require a drying step where the new claims do not. This statement is incorrect. In particular, the claims being examined are product claims and are directed to the resulting product regardless of the process. Thus, the claims examined in this application clearly do not recite a drying step as asserted in the Action. Therefore, the basis for withdrawing claims 40-47 is misplaced.

Furthermore, as clearly noted in the Action, claims 44-47 are product claims, even though they are written as product-by-process claims. Thus, claims 44-47 read on the elected invention and should be examined in this application in the same manner as the product claims. The basis for withdrawing claims 44-47 is without merit.

In view of these amendments and the following comments, reconsideration and allowance are requested.

### **Rejection of Claims 1, 3-11, 14-21, 24, 25 and 35-39**

Claims 1, 3-11, 14-21, 24, 25 and 35-39 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,337,323 to Cummings et al. in view of U.S. Patent No. 5,645,845 to Neumann et al. Cummings et al. is cited for disclosing a chemically stable insecticidally active pellet having a low moisture content which can also contain a binder such as polyvinylpyrrolidone vinyl acetate copolymer. Neumann et al. is cited for disclosing the use of perfumes in a formulation containing an insecticide.

The Action asserts that Cummings et al. teaches the present formulation, reduces the offensive odors associated with “acetate usage” and refers to column 6, lines 27-28 of Cummings et al. This statement mischaracterizes the disclosure of Cummings et al. The passage referred to in the Action clearly relates to the use of stable compositions using organic solvents. The entire sentence referred to in the Action states that the advantage of Cummings et al. relating to the pellets “without” the use of organic solvents results in higher strength pellets and “reducing the offensive odors associated with prior powder applications”. Thus, the passage referred to in the Action clearly discloses the pellets formed by the method of Cummings et al. without solvents reduces offensive odors. There is no suggestion in this passage of reducing offensive odors associated with acephate usage as asserted in the Action. Instead, this passage reduces odors associated with the solvent.

The invention is directed to the discovery of a specific type of masking agent that is particularly effective in reducing the offensive odors of sulfur-containing actives such as acephate without providing an overpowering perfume odor. It is known that sulfur-containing actives, and particularly acephate, have a strong and offensive odor that are very difficult to mask. The strong and offensive odor of acephate has limited its use, particularly in public areas such as golf courses where the strong odors of acephate are unacceptable. Conventional perfumes and fragrances are not capable of effectively masking the odor of acephate and produce an overpowering perfume smell without eliminating the underlying objectionable acephate odor. The invention is directed to the discovery that terpenes and oxygenated derivatives thereof are effective in masking the offensive odor of acephate without a heavy perfume smell. Thus, the terpenes and oxygenated derivatives thereof of the present invention effectively reduce the perceptible odor of acephate such that the resulting products exhibit little or no acephate odor after application and exhibit a light odor of the

terpene which dissipates after a short period of time. The prior acephate compositions using perfumes or other common masking agents are not effective in masking the odor of acephate.

The claims are not obvious to one of ordinary skill in the art since the cited patents either standing alone or in combination do not disclose or suggest a solid agrichemically effective formulation containing sulfur-containing active ingredient solids, an organic solvent and a masking agent comprising a terpene or oxygenated derivative thereof as claimed. As noted in the Action, Cummings et al. does not disclose or suggest reducing the odor of sulfur-containing active ingredients using a terpene or oxygenated derivative.

The Action again refers to Example 4 as disclosing the general use of reodorants which the Action asserts is a powerful smelling chemical. However, this assertion in the Action is inconsistent with the disclosure of Cummings et al. Cummings et al. specifically discloses the reodorant system as being a mixture of Stepan Toximul 3406F and Quest N-6574. These “reodorant” compounds are sulfonated anionic surfactants and not powerful pleasant smelling chemicals as asserted in the Action. These surfactants are not capable of masking or reducing the offensive odors of acephate and other sulfur-containing active compounds. Furthermore, Cummings et al. clearly does not identify the purpose of the reodorant or the function of the reodorant. There is no basis in Cummings et al. for the position that the sulfonated anionic surfactants are powerful pleasant smelling chemicals that reduce or mask the odor of sulfur-containing active ingredients. The only discussion in Cummings et al. of reducing odors relates to the pelletizing step and the absence of organic solvents. There is no suggestion in Cummings et al. of the use of masking agents.

As noted above, the invention is directed to specific masking agents, and particularly terpenes and oxygenated terpenes that are particularly effective in reducing the perceptible odor of sulfur-containing active ingredients. The invention is based on the discovery that

terpenes and oxygenated terpenes are particularly effective in reducing the perceptible odor of acephate compared to other common perfumes regardless of the strength of the odor of the perfume.

Newmann et al. relates to a gel formulation containing pyrethroid insecticides and a vaporization regulating agent. The formulation is particularly used as a mosquito fogger for treating a target area. There is no suggestion in Newmann et al. of systemic insecticides, acephate or extruded granules as in the present invention. Newmann et al. discloses a long list of natural and synthetic perfumes that can vaporize during use of the insecticide. Newmann et al. provides no motivation or incentive to one of ordinary skill in the art to use the natural or synthetic perfumes in sulfur-containing active ingredients or the pelletized product of Cummings et al.

Moreover, Newmann et al. provides no basis for selecting terpenes or oxygenated terpenes from the long list of perfumes and combining the terpenes or oxygenated terpenes with sulfur-containing active ingredients as in the present invention. Newmann et al. and Cummings et al. provide no guidance to one of ordinary skill in the art to select the specific masking agent according to the present invention. Furthermore, Cummings et al. and Newmann et al. provide no expectation of the effectiveness of terpenes and oxygenated terpenes in reducing the perceptible odor of sulfur-containing active ingredients such as acephate.

The rejection is based on hindsight and the present specification to randomly select one specific perfume from the long list of Newmann et al. and to use the selected perfume in a specific class of sulfur-containing actives. As noted above, Applicants have discovered that many commonly used perfumes are not effective in masking the perceptible odor of acephate and other sulfur-containing active ingredients with strong odors and that terpenes and

oxygenated terpenes are able to attain a result that cannot be obtained by other conventional perfumes. Thus, the invention is directed to the discovery of a specific masking agent that is particularly effective in masking the odors of acephate and other sulfur-containing active ingredients that cannot be obtained by conventional masking agents.

In view of the above comments, independent claims 1, 14, 35 and 44 are not obvious over the combination of Cummings et al. and Newmann et al. The claims depending therefrom are also not obvious for reciting additional features of the invention and are not disclosed or suggested in the combination of Cummings et al. and Newmann et al. For example, Cummings et al. and Newmann et al. do not disclose or suggest the active ingredients of claims 3 and 4, the specific masking agents of claims 5-9, or the binders of claims 10 and 11, in combination with the features of claim 1. Claims 15-25 depend from claim 14 and are allowable for the reasons in connection with claims 3-13.

The combination of Cummings et al. and Newmann et al. do not disclose the specific active ingredient of claim 36, or the active ingredient being an extruded solid having less than 5 wt% water where the masking agent is coated onto the extruded solid as in claim 37, spraying the masking agent on the extruded solid as in claim 38, or the agrichemically effective ingredient, polymeric binder and aromatic solvent are an extruded solid and where the masking agent is coated on the extruded solid by spraying as in claim 39, either alone or in combination with the features of claim 35. Accordingly, these claims are allowable over the art of record.

#### **Rejection of Claims 12, 13, 22 and 23**

Claims 12, 13, 22 and 23 are rejected under 35 U.S.C. § 103(a) as being obvious over Cummings et al. in view of Newmann et al. in view of EP 0 755 626 to Lew et al. Lew et al.

is cited for disclosing the use of a binder such as polyethylene oxide with an agrichemically effective solid formulation. These claims are submitted to be allowable as depending from an allowable base claim and for reciting the binder being a polyalkylene oxide or polyethylene oxide. Lew et al. does not provide the necessary motivation or incentive to include the claimed binders in a sulfur-containing active ingredient solid containing an aromatic solvent and a masking agent comprising a terpene or oxygenated derivative thereof as claimed. Accordingly, these claims are submitted to be allowable over the art of record.

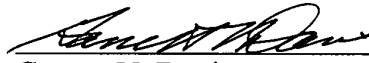
#### **Obviousness-Type Double Patenting Rejection**

Claims 26, 27 and 30-33 are provisionally rejected for obviousness-type double patenting over copending application Serial No. 10/508,407 in view of U.S. Patent No. 5,464,623 to Chan et al. The Action contends that the claims are not patentably distinct from each other because both applications claim a granulated insecticidal composition and a binding agent. Chan et al. is cited for disclosing formulating granules of acephate solids in the shape of pellets with a particular particle size to eliminate dust problems. The pending claims do not recite particle sizes or particle requirements. Thus, the basis for relying on Chan et al. is unclear since the pending claims have no relation to the passages referred to in the Action. Chan et al. is unrelated to the claimed invention of a sulfur-containing active ingredient, an aromatic solvent and a masking agent comprising a terpene or oxygenated derivative thereof. Neither the copending application nor Chan et al. remotely suggest a masking agent comprising a terpene or oxygenated derivative thereof. Thus, the position in the Action that the claims are not patentably distinct and that the claims are obvious over the pending claims either alone or in view of Chan et al. is without merit. Accordingly, the

Action has failed to establish that the pending claims are not patentably distinct over the claims of the pending application.

In view of these amendments and the above comments, reconsideration and allowance are requested.

Respectfully submitted,



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